

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BRUCE EDWARD DIGBY, #1181700 §
VS. § CIVIL ACTION NO. 9:06cv93
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be denied and the case dismissed. Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of Petitioner are without merit.

The Court notes that Petitioner complained in his objections that the Report and Recommendation did not address his reply to the Director's answer. It is noted that he did not file his reply by the deadline of November 15, 2006. The reply was not received until the same day that the Report and Recommendation was signed. The Court has reviewed the reply and notes that Petitioner argued that habeas corpus relief should be granted because of actual innocence. However, the Fifth Circuit has rejected the argument that actual innocence, standing alone, provides a basis for habeas corpus relief. *Dowthitt v. Johnson*, 230 F.3d 733, 741 (5th Cir. 2000), *cert. denied*, 532 U.S. 915 (2001); *Graham v. Johnson*, 168 F.3d 762, 788 (5th Cir. 1999); *Lucas v. Johnson*, 132 F.3d 1069, 1075 (5th Cir. 1998). On the other hand, federal habeas corpus relief is available if the evidence was insufficient to support a conviction. The Report and Recommendation fully explained

that there was sufficient evidence for finding Petitioner guilty. Petitioner presented his defense in an effort to persuade the trial court that he was innocent, but the trial court believed the State's evidence and found him guilty. Petitioner does not have a basis for habeas corpus relief because the trier of fact believed the State's version of events, as opposed to his version of events. Petitioner's objections on this matter lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **20** day of **December, 2006**.



Ron Clark
Ron Clark, United States District Judge